

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

IN RE: STRYKER REJUVENATE) Case No. 13-MD-2441 (DWF/FLN)
AND ABG II HIP IMPLANT)
PRODUCTS LIABILITY LITIGATION)
_____)
This Document Relates to) St. Paul, Minnesota
All Actions) December 19, 2013
) 9:39 a.m.

BEFORE **THE HONORABLE DONOVAN W. FRANK**
UNITED STATES DISTRICT COURT JUDGE
AND BEFORE **THE HONORABLE FRANKLIN L. NOEL**
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

STATUS CONFERENCE PROCEEDINGS

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1 MR. NEMO: Good morning, Your Honors. Tony Nemo
2 here on behalf of the Plaintiffs.

3 MR. BERNHEIM: Good morning, Your Honors, Jesse
4 Bernheim on behalf of the Plaintiffs.

5 MR. GORDON: Good morning, Your Honors. Ben
6 Gordon, Lead Counsel Committee, on behalf of the Plaintiffs.

7 THE HONORABLE JUDGE DONOVAN FRANK: We have an
8 agenda here, and there will be some other items that Judge
9 Noel and I bring up at some point during our conference
10 today, including and perhaps not limited to -- oh, by the
11 way, Judge Noel, I don't have this in my courtroom. I see a
12 sign Judge Kyle put up, here. It says, "cell phones off."

13 Is yours off?

14 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL:
15 Yes. I hope. I better look and see.

16 THE HONORABLE JUDGE DONOVAN FRANK: I am joking.
17 Maybe it has a holiday song if I call it?

18 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL: It
19 does not have a holiday song.

20 THE HONORABLE JUDGE DONOVAN FRANK: All right.
21 Back to the -- are we okay, Brenda? Did you --

22 THE CLERK: Yes, fine.

23 THE HONORABLE JUDGE DONOVAN FRANK: All right.
24 For those of you that are listening in, we actually moved
25 from the courtroom at the end of the hallway because we

1 had -- for some reason we learned the hard way yesterday
2 during four hours of oral argument that our phone was not
3 working on another case. And they have been unable to
4 diagnose and fix it, so we are here in a different
5 courtroom.

6 At some point, we will be -- before we adjourn
7 this morning, we will be discussing -- and it is going to
8 come up through presentation by counsel, a number of things
9 will be addressed both as agenda items and motions and
10 briefing items for the next status conference. So, it looks
11 like it will be a busy day when we are next together on
12 January 23rd.

13 And we will set up a specific schedule beyond the
14 agenda items. So, we will be bringing up -- and maybe in
15 response to some of the comments the lawyers for each side
16 are bringing up on what we expect to happen, we will
17 probably be adding a couple of things where the parties
18 aren't necessarily on agreement on. And then when we get to
19 the appropriate -- when we get to the appropriate spot, we
20 will address the -- well, maybe I can address it now.

21 It is likely what we will do, but we will let
22 counsel say what they need to say when we get to that agenda
23 item. It is likely that we won't hear from Mr. Crowley
24 today, but what will happen is that with all of these meet
25 and confer sessions between now and the early part of

1 January, we will need to be kept informed, because we will
2 likely set up a situation to have -- if some of those ESI
3 and other issues haven't been resolved, to have -- if they
4 are available, one representative for plaintiff and one for
5 defendant, not necessarily in an adversarial context, but it
6 could be part of that, to educate the Court. And then we
7 will decide whether we need our own person to make a
8 decision on it or we will have enough information to go
9 ahead so we can move forward expeditiously. And our goal is
10 going to be not later than the next time we get together,
11 including an order to follow from there, unless there's
12 aspects of it that are premature.

13 Do you want to add anything to that, Judge?

14 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL: No.

15 THE HONORABLE JUDGE DONOVAN FRANK: All right.

16 And then this isn't my attempt or our attempt to cut
17 discussion off of this issue when we get to that agenda
18 item.

19 The other issue that we will probably leave you
20 with is we will be -- we will see if we can get that whole
21 day filled up on January 23rd -- is proposals from each
22 party, for lack of a better word, whether you want to call
23 it a 26(f) report, customized to an MDL, or more informally
24 just some deadlines for discovery, any proposed motion
25 dates, trial dates. And then if one or more of you, and I

1 know that defense feels that one aspect of that, some or all
2 of it may be either unnecessary or some of it is premature
3 at this point to be focused in on, then obviously, that can
4 also be so stated. And then we will make some decisions at
5 the next conference, but with input from everyone.

6 So, whether there are some issues decided on meet
7 and confer in terms of necessity, or lack thereof, for any
8 type of order in place, we will ensure input to all parties.
9 I thought I would wait, or we would wait until -- as we move
10 through some of these agenda items -- both the letter I sent
11 out in the last couple of weeks to all of the known State
12 Judges, also my telephone conversation with Judge Henning a
13 little over a week ago now, and before the case management
14 conference there, and then also my anticipated conversation.
15 This week we played telephone, a New Jersey Judge and I
16 played telephone tag, more my fault than his because of my
17 schedule, so that we have the high, high priority on
18 coordinating a number of these issues.

19 Then I will wait until probably the end, unless it
20 comes up sooner, for us to discuss any issues that are
21 relevant to settlement. So, with that, we can go through
22 the agenda, unless -- anything you want to state at this
23 time, Judge Noel?

24 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL: No.

25 THE HONORABLE JUDGE DONOVAN FRANK: All right. We

1 can go forward, then, with the agenda? And then I will just
2 remind you, and that was a note that Brenda sent me, that
3 with counsel listening in -- and these aren't, like I said
4 before at other times or get-togethers, these aren't fancy
5 entertainment mikes. So, you have to stay fairly close to
6 them. And if we don't speak into the microphones, the folks
7 on the phone cannot hear us. So, whenever you are ready?

8 MS. WOODWARD: All right, Your Honor. So, we have
9 our update on case counts for you. This is updated, cases
10 filed through December 17th. It is an approximate number.
11 And I can tell you in the past two days there have been many
12 more filings.

13 Cases in the MDL are on their way, 415. Cases in
14 New Jersey State Court, 546. Cases in other State Courts,
15 and there is quite a long list of those, though most of them
16 are removable, I would say, is 79, which is a total around
17 the country of 1,040 cases.

18 MR. FLOWERS: And Your Honor, I will just add to
19 that, because we did some updated numbers. I think there is
20 at least another 50 cases that were filed in the MDL since
21 that time.

22 There is also -- one of the PSC members who is
23 here, Jeff Bowersox, is from Oregon. He has filed 20 to 30
24 cases in Oregon that are going to be removed here, as well, so
25 I suspect we will be well over 500 cases or probably are

1 right now.

2 THE HONORABLE JUDGE DONOVAN FRANK: Well, and as I
3 said, as we said back in chambers, I sent out that list.
4 And if there are lawyers in the room who either didn't get
5 access to the letter or want the letter I sent out with
6 input from counsel to all Judges in the country, if I have
7 missed somebody or we get people added to the list, whether
8 it is the letter and/or phone call. Because like I had said
9 the other -- this morning, I sent Judge Henning, after she
10 and I had a very, I think, useful conversation, I sent her a
11 copy of all of our orders here, gave her some website
12 descriptions, and then also all of the orders that -- I have
13 a book of orders from the New Jersey Court. And so, if
14 counsel either listening in -- and they can after the
15 hearing is over e-mail or contact, or if someone in the
16 courtroom didn't get a copy of that: Well, what is this
17 letter the Judge is talking about? And it was e-filed, as
18 well. But, in terms of, to all of the Judges in the country
19 that have cases.

20 But, any questions on the MDL count?

21 MS. WOODWARD: Your Honor, the Defendants will
22 provide you with an ongoing list as new cases are filed
23 around the country of updated Judges' names and addresses.
24 And I also brought with me the usual map and list of
25 Plaintiffs' counsel, if you would like to have those?

1 THE HONORABLE JUDGE DONOVAN FRANK: I would, yes.
2 Thank you. Shall we -- unless there is something else on
3 that issue, we can move on to the status of State Court
4 proceedings.

5 MS. WOODWARD: That would be fine, Your Honor.

6 THE HONORABLE JUDGE DONOVAN FRANK: Maybe you
7 wanted to handle it -- I mean, if you had something else in
8 mind, we'll --

9 MR. FLOWERS: Did not, Your Honor, Mr. Bernheim is
10 Liaison, so --

11 THE HONORABLE JUDGE DONOVAN FRANK: All right,
12 fair enough.

13 MR. FLOWERS: He can attest to --

14 MR. BERNHEIM: Good morning, Your Honors.

15 THE HONORABLE JUDGE DONOVAN FRANK: Hello?

16 MR. BERNHEIM: New Jersey, additional documents
17 have been produced since the last conference. We don't
18 believe that there are any depositions that are currently
19 set in New Jersey, the next case management conference there
20 is on January 28th.

21 As Your Honors are aware in Broward County the
22 first case management conference in front of Judge Henning
23 in the Complex Division was on December 11th. The Judge
24 asked for master discovery, Plaintiff fact sheets. We are
25 in the process of preparing those down there. There is no

1 second case management conference currently set, but we
2 anticipate it will be sometime in January.

3 THE HONORABLE JUDGE DONOVAN FRANK: Right, and I
4 can tell you in my conversation with Judge Henning, I had --
5 and I would call it a very constructive, worthwhile
6 conversation, I have kind of promised her -- and I think she
7 has done the same to me -- and I suppose it is not personal,
8 it is to the cases here and cases that -- since they are
9 kind of at the incipient stages of their case, the key word
10 here is coordination. We are going to try to work together
11 so lawyers and clients don't have to double down, so to
12 speak. Well, we are doing this in the MDL. We are going to
13 try to work together. Obviously, she has her
14 responsibilities, and we have ours.

15 We kind of committed to each other that we will
16 try to coordinate this and work with the lawyers so that we
17 can proceed at the same time, and kind of have an awareness
18 of -- well, something that one of us might do might directly
19 or indirectly affect the cases there.

20 And obviously, there is a host of other cases, I
21 believe, in another county down there, I believe, if I
22 remember correctly.

23 MR. BERNHEIM: Yes, Your Honor, there are seven
24 cases filed in Palm Beach County that was just consolidated
25 in front of Judge Crow.

1 THE HONORABLE JUDGE DONOVAN FRANK: Right. So, I
2 will reach out to them, as well. But, I think we kind of
3 have a mutual commitment that, hopefully -- and that is
4 frankly the intent of an MDL, generally, is to -- if we can
5 coordinate these, we can maybe save some time, money and
6 delay, minimize delay for everybody on both sides.

7 MR. BERNHEIM: Yes, Your Honor, Judge Henning made
8 that clear at the case management conference, as well.

9 THE HONORABLE JUDGE DONOVAN FRANK: All right.

10 MS. WOODWARD: I will just add briefly that in New
11 Jersey they did complete the first phase of the mediation
12 program there. And I believe there were 6 cases mediated.
13 4 of those cases settled. Judge Martinotti expressed at the
14 status conference earlier this week that took place in New
15 Jersey his delight with the success of that program, and
16 they are gearing up for additional mediations to take place
17 in January and they are talking about what Phase 2 of the
18 program might look like. They are also meeting and
19 conferring in New Jersey on additional discovery issues.

20 THE HONORABLE JUDGE DONOVAN FRANK: We will make
21 sure we chat. And I think in fairness to him, he was
22 probably trying to reach me. But, no complaints by me, we
23 have been in court a lot, but we will touch base this week.

24 But, a question I have, and he and I have
25 discussed it, is just the nature -- and we discussed this

1 last time, if I may say so. I think you each described,
2 meaning, kind of characterized how these cases were selected
3 there a bit differently. But, in terms of the selection
4 process, the access people have to the specifics of each
5 case and the nature of the settlement, because that would be
6 the first question. In other words, if a lawyer was in
7 front of me now and said: We just settled three cases in
8 State Court, I would say, I will request the terms. In fact
9 that is exactly what happened in the *Guidant* case, not that
10 one size fits all. I want to see the specific terms of the
11 settlement and the nature of the case to see how
12 representative it is, so it can be helpful.

13 Do you know what the terms -- and I will ask the
14 Judge the same thing, because I wasn't quite clear on what
15 the nature of the program was.

16 MS. WOODWARD: Well, just in general, my
17 understanding is that the plaintiffs selected some sample
18 cases to submit to the program. The defense selected some.
19 And the Judge chose some at random.

20 THE HONORABLE JUDGE DONOVAN FRANK: Do we know how
21 they were selected? I may have asked this last month, so
22 I --

23 MR. CAMPILLO: I can try to address that, Your
24 Honor.

25 THE HONORABLE JUDGE DONOVAN FRANK: Okay.

1 MR. CAMPILLO: Judge Martinotti selected 6 cases,
2 presumably from his review of the pleadings, and possibly
3 the preliminary -- I don't think he even gets a disclosure.
4 So, from the pleadings, at random. And then each side was
5 allowed to select 2 cases for any reason, without any
6 criteria given as to how to select those. So, 6 were from
7 the Judge, 2 from the plaintiffs, 2 from the defendants.

8 For the second round or second phase that is going
9 to be done early next year, the Judge is only going to pick
10 4 cases, and each the plaintiff and defendant is going to be
11 allowed to select 3. Again, no criteria spelled out for how
12 they select those three.

13 THE HONORABLE JUDGE DONOVAN FRANK: May I ask, who
14 has access to the terms of the settlement? And of course,
15 if you have the name of the case, I guess you could look at
16 the pleadings; but, who has access to the specific terms of
17 the settlement?

18 MR. CAMPILLO: Well, the terms of each settlement
19 I believe are confidential as between the parties.

20 THE HONORABLE JUDGE DONOVAN FRANK: Because if
21 they were in front of me, I would say, my -- as we proceed
22 in an MDL, I don't believe the confidentiality would hold,
23 frankly. And I would say -- we will put some protections
24 in, but we in order to administer -- I am not criticizing
25 the process, whatsoever. I am just curious, especially when

1 there are 500 and some cases.

2 And I realize when I say this that transcripts
3 will be produced and everybody will be reading what I am
4 saying. But, I am just curious how they will be used, since
5 there are lots of cases down there.

6 MR. CAMPILLO: Well, my understanding is that at
7 least the hope is that since you are using the same
8 mediators for future negotiations, that I guess the
9 mediators will have some idea of values and so forth. But,
10 in terms of disclosure of the actual terms of each
11 settlement, I believe they are confidential.

12 THE HONORABLE JUDGE DONOVAN FRANK: All right.
13 And maybe I am saying it in the context of kind of kind of
14 the underlying purpose of the bellwether selection system
15 that everybody gets to know -- and of course one of the
16 criticisms of that system, and you could arguably apply that
17 to, I guess, settlement approaches in MDL's, as well, with
18 or without the help of the Judge, if you don't truly pick
19 representative cases, as opposed to the best cases for the
20 plaintiff and best cases for the defendant, all of the other
21 cases will say: Well, my case is not like that at all. I
22 have got a much better case. Or, oh, no, I don't have that,
23 so that settlement or that trial is meaningless to my
24 client. That was why I asked the questions in terms of --
25 and I will probably be repetitive here, and I don't mean to

1 get us too far off the agenda, and I think His Honor might
2 have something to say about this, too.

3 But, again, using -- whether it is premature or
4 not at some point today, or soon, to talk about what
5 decisions or discovery is needed before we discuss some type
6 of settlement modality of some kind, or process. What was
7 so helpful, and I had to decide a few other issues in the
8 case, as they picked -- we carefully picked criteria for the
9 selection of bellwether cases. And then I won't go through
10 that now, but then when we went to the settlement, we had 6
11 or 7 categories of settlement with a range of settlement,
12 even though we used two mediators, special masters, Judge
13 Boylan and Pat Juneau out of New Orleans. And Pat Juneau
14 got picked because that is what the parties agreed on, to
15 work with Judge Boylan. And it really couldn't have worked
16 out any better than it did in my humble opinion of how we
17 all worked together. But, going in, all parties at large
18 could see the categories so that one size didn't fit all.
19 But, it is a little premature to be having those discussions
20 now. But, that is why I inquired about the selection
21 criteria down in --

22 MR. CAMPILLO: The only thing I can add from
23 personal knowledge, I think, is I believe there was some
24 effort to have different Plaintiffs' firms engaged. And I
25 believe all 4 cases that were resolved involved, as lead

1 counsel for each of those Plaintiffs, a different firm. So,
2 I think that bodes well for getting that knowledge, at
3 least --

4 THE HONORABLE JUDGE DONOVAN FRANK: That is
5 probably true, yeah.

6 MR. CAMPILLO: -- across the board, which I think
7 makes a lot of sense.

8 THE HONORABLE JUDGE DONOVAN FRANK: Do you want to
9 get in here?

10 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL:
11 Yes, and if I could just add a couple of questions? And if
12 you were asked this already, I apologize. The total
13 universe of cases that were in this range were 10? There
14 were 6 that the Judge picked, and 2 from each of the
15 plaintiffs and each of the defendants?

16 MR. CAMPILLO: That is correct.

17 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL: And
18 so of those 10 cases, 4 settled, is that correct?

19 MR. CAMPILLO: Yes, 4 settled; 1 the negotiations
20 continue, it hasn't been completed; and 1 has been not
21 resolved, and it looks like there's no further talks on that
22 other one. The remaining 4 cases from that first group of
23 10 is scheduled for January, I think the middle of January,
24 to be mediated.

25 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL:

1 They haven't even engaged in the process, yet?

2 MR. CAMPILLO: Exactly.

3 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL: The
4 6 that did, 1 of them you said is continuing and the other
5 goes back in the pool of cases?

6 MR. CAMPILLO: Yes, the settlement was not
7 achieved. And there is no follow-up to that.

8 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL:
9 Okay, thank you.

10 THE HONORABLE JUDGE DONOVAN FRANK: Any of the
11 Plaintiffs' lawyers want to -- and I will say something that
12 I said back in chambers. It wasn't necessarily in the
13 context of settlement; but obviously, if there are issues,
14 maybe they will come up in January. If the parties say,
15 well, here, it could be premature, or we could say: Here
16 are the issues we need the Court to decide in order to give
17 us meaningful direction on where to go, whether it is
18 selection of cases or settlement, and they can range
19 anything from theories of liability to expert witnesses and
20 the list goes on.

21 And it may be premature, but that is why I was
22 kind of asking those questions, because one way or the other
23 when there are settlements, directly or indirectly, or in
24 some other way, they impact the case.

25 And I will just say this, and maybe we can move

1 on. I know that as Pat Juneau and Magistrate Judge Boylan
2 sat down with the parties, one of the first questions they
3 had, and they had an appropriate protective order in place,
4 and there was not really any strong objection, as long as
5 they knew it was coming from the Court. Everybody laid out
6 every single settlement they were aware of in the country,
7 the terms of the settlement, the amount, everything, the
8 type of case. And in part so that the Court has a lot at
9 stake, as do a lot of lawyers to say, well, now here are two
10 cases. And when were you going to tell us that the
11 settlement for two, almost exactly the same cases, one was
12 this amount or one was that amount, whatever the case may
13 be? So, at some point, as I said back in chambers, if there
14 are issues we can be helpful with, without trampling on
15 somebody's rights, because sometimes it is my criticism of
16 some judges, state and federal, that, well, they refuse to
17 decide any issues and say, go over and mediate your case and
18 we decline to do anything.

19 Well, sometimes you need us to make decisions, and
20 we are just saying, that is part of the MDL process and we
21 will make ourselves available. That is why we had a very
22 brief discussion back in chambers in that regard. It may
23 well be that one or more of you, or all of you, are
24 thinking: Well, way to soon. We will need this discovery.
25 We need this, or we need that. One size doesn't fit all.

1 Maybe enough said about that, unless you have
2 something else. And anything else before I move on to
3 another item, here?

4 MS. WOODWARD: I did want to comment very quickly
5 on the Florida status conference with Judge Henning. It was
6 very positive. And I think the Judge recognized that there
7 were a lot of preliminary issues that need to be resolved
8 and ordered the parties to meet and confer on those issues.
9 One of those issues is now resolved, which is the protective
10 order that will be entered. It will be the one that Your
11 Honor hopefully gets the chance to sign later today. So
12 that is a good development.

13 MR. BERNHEIM: That is right, Your Honor. And the
14 other state litigations, there's the two cases that are
15 filed in Massachusetts, there's -- Mr. Flowers was talking
16 earlier about the filings in Oregon. We anticipate that
17 those -- none of them are going to be transferred to the
18 MDL. 3 do have Oregon Defendants, so we believe that they
19 are going to remain in State Court there.

20 There are 4 cases filed in Michigan, 1 case filed
21 in Philadelphia, 1 case filed in West Virginia, and 1 case
22 filed in Louisiana.

23 THE HONORABLE JUDGE DONOVAN FRANK: I will just as
24 a footnote, even though I promised to move on from
25 settlement, as a footnote I will just say that apart from

1 the involvement of His Honor Judge Noel in any settlement
2 issues, because, you know, we haven't really addressed that
3 yet, I don't think Judge Boylan would mind me saying, he
4 turned 65 yesterday and he is retiring as our Chief
5 Magistrate Judge in a few weeks. He is ready, willing and
6 able, as his first task, to lunge into this MDL.

7 And actually, there is a Magistrate Judge out
8 in -- or not Magistrate Judge -- a mediator out in
9 California, Mr. Polsky, who has contacted me, I suppose in
10 part because he may know Ms. Fleishman, her firm. And in
11 part because his daughter was my law clerk years ago and is
12 now a partner in a firm here in town.

13 I have not talked to him, but I kind of half
14 serious, half in jest say this, because I have had
15 discussion with Judge Boylan, because he and Pat Juneau did
16 everything. Well, Judge Boylan doesn't need my explanation
17 of his reputation. So, that would be something, a tag team
18 of Noel and Boylan; wouldn't it? So, but we will, at the
19 appropriate time, the parties may have something entirely
20 different in mind and may think it is entirely premature to
21 be having such discussions at this stage of the case. And I
22 will just renew anything that I hear from any of the State
23 Judges that I talk to, I will say what I said before, I will
24 pass through. There is no side agreement that Judges have
25 that: Well, let me tell you something, but don't tell the

1 lawyers. Arguably, that would be inappropriate, to begin
2 with; but, that is not the way these conversations go. We
3 would call you.

4 Although last week when I called -- not on this
5 MDL, they call them Justices up in British Columbia, they
6 said it is the first time they ever had a call in 14 years
7 from a Federal Judge. I don't know what that means, because
8 we -- that was a dispute under another law, treaty. But,
9 let's move on, then.

10 But, like I said, we will revisit some of those
11 issues when one or more parties feel it is appropriate. We
12 can move on to the next agenda item. Thank you very much.
13 Thank you.

14 MR. FLOWERS: Your Honor, the next thing is the
15 electronic service of process, where we have worked out an
16 agreement and submitted an order essentially allowing
17 service on both Howmedica and the various Stryker
18 Corporations via e-mail. The e-mail address is set out in
19 the order.

20 MS. WOODWARD: That order is final and ready for
21 Your Honor's signature.

22 THE HONORABLE JUDGE DONOVAN FRANK: We will take
23 care of that. And for the record, the number attached to
24 that order? Is there a number?

25 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL:

1 Number 7.

2 THE HONORABLE JUDGE DONOVAN FRANK: Under the
3 B7 -- it's not bingo today, but --

4 MR. FLOWERS: Number 7, Your Honor. And also, the
5 corporation Stryker Ireland, we have reached an agreement
6 about that corporation for those who have sued it, and that
7 is that Stryker is agreeing to toll the statute of
8 limitations on that particular entity, in order to kind of
9 put it aside for a while until we conduct discovery.

10 MS. WOODWARD: Right. Just one caveat. We will
11 work out the language of the tolling agreement. I don't
12 anticipate any problems on that front. But, of course, the
13 agreement depends on what the tolling agreement actually
14 says.

15 MR. FLOWERS: Agreed.

16 THE HONORABLE JUDGE DONOVAN FRANK: Obviously, as
17 you are both well aware, that is a common arrangement to
18 make which seems in the cases I have had to benefit both
19 parties.

20 MS. WOODWARD: On the interim protective order,
21 Your Honor, the parties have reached an agreement as to the
22 language of an interim order. We will be submitting a final
23 order for your signature this afternoon. The order that was
24 submitted with the joint report earlier this week will be
25 supplemented to add a footnote in section -- or in paragraph

1 15(b), rather, by the agreement of the parties.

2 MR. FLOWERS: That is correct, Your Honor. I just
3 add one caveat to that. This morning we had agreed to --
4 assuming that the order is okay with you and signed, that
5 the production that has occurred in New Jersey thus far will
6 be given to the MDL within 10 days so we can get moving on
7 reviewing those documents.

8 MS. WOODWARD: That is agreeable.

9 THE HONORABLE JUDGE DONOVAN FRANK: Is there an
10 issue, then, on how you are going to handle with the Rule
11 15(b) -- or not the rule, paragraph 15(b).

12 MS. WOODWARD: An issue about the language, Your
13 Honor?

14 THE HONORABLE JUDGE DONOVAN FRANK: Yes. In other
15 words, we kind of discussed, if you can't agree --

16 MS. WOODWARD: Well, I believe Mr. Flowers and I
17 talked about that this morning and I read to him the
18 specific language which I am happy to put it on the record
19 so there is no dispute later --

20 THE HONORABLE JUDGE DONOVAN FRANK: No, that is
21 not necessary. I will turn it off.

22 MS. WOODWARD: I'm sorry, I misunderstood, I
23 believe.

24 (Discussion off the record.)

25 THE HONORABLE JUDGE DONOVAN FRANK: All right.

1 So, on the permanent protective order, we have this meet and
2 confer and briefing in mind to take up at the next hearing.
3 It is the footnote that we are all on the same page on?

4 MR. FLOWERS: Correct, Your Honor. We are all on
5 the same page in the footnote. In terms of this being an
6 interim order, the permanent order we intend to brief,
7 letter-wise, to you for the next hearing.

8 THE HONORABLE JUDGE DONOVAN FRANK: So we are on
9 the same page on that procedure.

10 MS. WOODWARD: That is correct, Your Honor.

11 MR. FLOWERS: Then, Your Honor, we had on the next
12 two items, the next item is a common benefit order. We had
13 prepared and circulated this to the Defendant and they have
14 had some time to review it, despite the fact that we don't
15 think they need to review it.

16 As a courtesy, we have allowed them to do it. And
17 we have now agreed this morning -- they are going to do
18 that. We are going to have a meet and confer on January 3rd
19 about any problems they may have with it. And if there is
20 an issue, we intend to bring it to the Court soon after June
21 3rd in order to get this particular issue out of the way
22 before the next court hearing, if possible.

23 MS. WOODWARD: That is correct, Your Honor, we
24 were recently provided with this draft order. We want some
25 time to look at it. And I think we can meet and confer on

1 January 3rd and then move forward expeditiously from there.

2 THE HONORABLE JUDGE DONOVAN FRANK: And I think
3 you are about to tell us you are going to do -- with a
4 similar time line and process on the master log and short
5 form complaints?

6 MR. FLOWERS: Same process, Your Honor.

7 MS. WOODWARD: Correct.

8 THE HONORABLE JUDGE DONOVAN FRANK: So, for those
9 of you that weren't in -- you can ask your fellow
10 Plaintiffs' counsel on the Committee, or Defense counsel on
11 the time process, because anything that isn't worked out, we
12 will address it in January here, and with a decision from
13 the Court, and we have set up a briefing -- a letter
14 briefing schedule in the event that is necessary. So,
15 moving on.

16 MS. WOODWARD: The order relating to fact sheets
17 and preliminary disclosures, Ms. Zimmerman is actually going
18 to be submitting later this afternoon an order for Your
19 Honor's signature that cleans up some formatting,
20 typographical issues, so that will be ready for Your Honor's
21 signature right after that. We did reach a side agreement
22 on the timing of the disclosures at Plaintiffs' request,
23 because we are working out -- or they are working out the
24 digitization of the order or rather the fact sheets and the
25 disclosure forms.

1 And that timing is, Plaintiffs will have 50 days
2 from the date of the order to submit their preliminary
3 disclosures, and 80 days from the date of the order to
4 submit their fact sheets.

5 THE HONORABLE JUDGE DONOVAN FRANK: And this is, I
6 believe, preliminary order 8?

7 MR. FLOWERS: Correct.

8 THE HONORABLE JUDGE DONOVAN FRANK: Could you
9 submit an order reflecting those changes in the dates?

10 MR. FLOWERS: We will, Your Honor.

11 THE HONORABLE JUDGE DONOVAN FRANK: So we make
12 sure we get those right, then we will sign it?

13 MS. WOODWARD: That would be fine.

14 MR. CAMPILLO: Just to clarify, that is for the
15 initial fact sheets and complaints that are on file now, but
16 future ones will go back to the 60 and 30-day time frames?

17 MR. FLOWERS: Exactly.

18 THE HONORABLE JUDGE DONOVAN FRANK: That is our
19 understanding as you explained it back in chambers. All
20 right?

21 MS. WOODWARD: Thank you.

22 MR. FLOWERS: The next issue on the agenda, Your
23 Honor, was the introduction to the MDL website.

24 THE HONORABLE JUDGE DONOVAN FRANK: As you know,
25 we had two different approaches back in chambers. What we

1 will do is we will look at those, and we will draft and put
2 a -- send it out a day or two before it goes up on the
3 website, but we will draft, based upon your input from your
4 two proposals, and we will put it up on the website.

5 And I guess I will relieve you from the -- Judge
6 Noel has persuaded me that it's more cumbersome to say:
7 Well, let's send it out and then have a letter brief on what
8 you don't like about it. We will go ahead, based upon your
9 input draft something to go up online. And then obviously,
10 whether it was this issue or another issue, once that is
11 done, if at some point sooner or later the parties say:
12 Well, we have now reached an agreement, and here's -- it is
13 just like your order or a summary for the website, or here
14 it is, I guess we won't know that if and unless you contact
15 us. But, we will handle it in that way so we are not
16 anticipating or requesting anything further from either
17 counsel.

18 MR. FLOWERS: Thank you.

19 HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL: Just so
20 that I am clear, the two proposals that are before us are
21 Exhibits 5 and 6 to this joint report, correct?

22 MR. GRIFFIN: Your Honor, Tim Griffin. That is
23 correct. Exhibit 6 was the original proposal by Defendants.
24 Exhibit 5 contains Plaintiffs' red lines and additional
25 information about contacts.

1 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL:

2 That is what we are supposed to be working from.

3 THE HONORABLE JUDGE DONOVAN FRANK: All right.

4 MR. GRIFFIN: Yes.

5 MR. FLOWERS: Then, Your Honor, there are
6 additional issues here that under agenda item 4 were matters
7 subject to ongoing conferral. The first one is ex parte
8 contacts with treating physicians that we are dealing with
9 with the permanent protective order. Proper Defendants,
10 which I should probably speak about.

11 MS. WOODWARD: Well, Your Honor is aware of our
12 position on that. The Stryker -- the non-HOC entities
13 should not be defendants in this matter. We think after the
14 master complaint is resolved, we can move on to that as the
15 next issue. But, we will keep talking about it in the
16 interim.

17 MR. FLOWERS: That is fine.

18 THE HONORABLE JUDGE DONOVAN FRANK: All right.

19 MR. FLOWERS: The next issue is production of
20 device exemplars, Your Honor. And we had a long
21 conversation about this, this morning. This is an issue
22 that is very serious from our perspective. We need device
23 exemplars in order to analyze them, to identify and show
24 what the defects are in this device.

25 Since the last hearing, we were provided with a

1 list of devices that Stryker has still. That list, we are
2 going to do some discovery on, frankly, because we are
3 wondering why potentially 31,000 of these devices were
4 implanted in the United States and so few remain. Or
5 manufactured -- may not have been implanted -- so, we as
6 Plaintiffs intend to do some discovery on that issue,
7 itself, as to where all those devices went.

8 And number two is, we understand that Stryker is
9 unwilling at this stage to turn over any exemplars to us for
10 several reasons. And our intention is to bring a formal
11 motion for the next status hearing in order to address that
12 issue, some type of motion to compel, frankly, in order to
13 bring that issue to a head.

14 MR. CAMPILLO: Yeah. I did want to add one thing,
15 Your Honor.

16 THE HONORABLE JUDGE DONOVAN FRANK: All right.

17 MR. CAMPILLO: And that is if this helps, in using
18 very rough numbers, 31,000 is the number of products
19 implanted worldwide, approximately 21,000 of which were
20 implanted in the United States. That doesn't suggest or
21 should suggest that there's 10,000 exemplars or products
22 that were made that were not used; that is not the case.

23 THE HONORABLE JUDGE DONOVAN FRANK: Now, as kind
24 of an update to this, and this is just going to mirror
25 something that was said in chambers this morning during our

1 conference. But as I understand it, at least it was the
2 view -- it seemed to be the view of all of the lawyers in
3 chambers, that as far as counsel knows, this issue hasn't
4 been addressed yet, or the issue may be on the table, but it
5 hasn't been addressed. There is no order in place in any
6 other court in the country that we know of, at least right
7 now? Is that a fair assumption on my part?

8 MR. FLOWERS: We are not, the Plaintiffs are not
9 aware of any order.

10 THE HONORABLE JUDGE DONOVAN FRANK: And the
11 Defense?

12 MS. WOODWARD: We are not aware of any order.

13 THE HONORABLE JUDGE DONOVAN FRANK: I will not
14 create an issue where there isn't one, of course, but I will
15 just let any communications I have with any of the State
16 Judges -- I will just make sure they know that is something
17 that is being discussed. And maybe they are aware of that.

18 So, hopefully, we can coordinate, whether it is by
19 agreement or part court decision, part agreement, we can
20 coordinate it. So, everybody can benefit so we don't have
21 two, three, four more orders out there. And I think that is
22 one of the concerns that some of you have that, well, the
23 availability of exemplars and when and how they are tested,
24 and the conditions of that, that could be affected by, well,
25 how many judges are going to be addressing this?

1 So, I think I would be frankly surprised -- I hope
2 I am not being naive -- if we can't coordinate this with the
3 other courts so that we can make part of this a non-issue,
4 apart from what the parties can agree or not agree on. So,
5 I intend to just indicate that to any Judge I communicate
6 with. So --

7 MR. FLOWERS: Okay. Thank you. Our last issue
8 deals, Your Honor, with ESI information. Mr. Gordon is
9 going to come up and deal with that.

10 THE HONORABLE JUDGE DONOVAN FRANK: All right.

11 MR. GORDON: Good morning, Your Honors. Ben
12 Gordon for the Lead Counsel Committee. Your Honors, I will
13 try to be brief on this. As you know, we have Mr. Crowley
14 here. And I just want to talk briefly as to why we have him
15 here.

16 I understand that you are not prepared to hear him
17 today, but I want just want to at least forecast the issue a
18 little bit for Your Honors, because I think it is going to
19 be something that is going to require ongoing work with the
20 Defendants and with the Court.

21 THE HONORABLE JUDGE DONOVAN FRANK: All right.

22 MR. GORDON: The ESI, the electronically-stored
23 information in this case is critical to where we are going
24 in the case, and the liability aspect of the case. To
25 understand a lot of the underpinnings of our factual

1 allegations, we have to get the discovery moving forward in
2 this case. And at this point we feel like we have been
3 stymied to some extent in getting that critical information.

4 As Your Honors know, in past mass torts, we
5 frankly have been criticized, plaintiff's bar and others on
6 how willy-nilly we tend to hire document companies to do
7 this work.

8 THE HONORABLE JUDGE DONOVAN FRANK: Well, and
9 frankly courts have been criticized, too, for not managing
10 it early on and the cost of the whole show.

11 MR. GORDON: Precisely. And honestly, Judge, I
12 realize that maybe Ms. Woodward is skeptical of our motives,
13 here. But, the truth is we want to do -- I told her this in
14 court at the last in-person status conference to do what we
15 think is going to help prevent that here.

16 We have spent millions of dollars in other big
17 cases on these kinds of costs because it is a complex and a
18 time-consuming process. But, we believe that things have
19 changed enough in the last two to three years that the state
20 of the art is such that with the right group doing the work
21 and with the right shared understanding of the process and
22 transparency from inception, we can sharply reduce the
23 amount of time it takes to do the review process and to get
24 the documents, and to frankly get through the liability
25 analysis and get cases set for trial. And harkening back to

1 the points earlier, Your Honors, it is our position, I
2 believe -- at least my position that any discussion of
3 settlement in the case is highly premature if we are not at
4 a point that we can even analyze the liability aspect of the
5 case and have the cases somewhat prepared for trial. So,
6 those discussions to me can only be done and only be moved
7 forward once we've completed this analysis. And to do it,
8 we need to sit down with the defense, and I understand now
9 they are prepared to do that, and their technical people and
10 someone like Mr. Crowley -- and I want to talk briefly about
11 his credentials -- so that we can ensure reliability and
12 transparency of the process.

13 We are not looking for their mental impressions,
14 Your Honor. We are simply looking to get factual
15 information about the way the documents and other responsive
16 materials have been organized, collected, and the way they
17 intend to produce them.

18 We understand they produced some segment of the
19 documents in New Jersey already, a small segment, I believe.
20 From what we know about the order that is in place there, we
21 frankly do have more questions than answers at this point as
22 to how that process has been done and whether or not it has
23 led to a thorough going and reliable production of the
24 critical documents, here.

25 We are not certain that it is not adequate, we

1 just don't have enough answers. And Mr. Crowley with his
2 background and credentials can help us get to that
3 information. That is the entire reason we retained him. He
4 has worked for corporations and for plaintiffs groups in
5 other cases. He is very experienced.

6 Just by way of background, let me tell you a
7 little about him. He is the Chair of the Sedona Conference
8 Working Group on Best Practices for Electronic Discovery,
9 Retention and Production.

10 He is the Editor and Chief of the Sedona
11 Conference Commentary on Information Governance, and the
12 Sedona Conference Commentary on Proportionality in
13 Electronic Discovery.

14 He is the Senior Editor of the Sedona Conference
15 Commentary on Legal Holds -- I'm sorry -- on Legal Holds and
16 the Sedona Principles. I will abbreviate this.

17 He is a Member of the Advisory Board for
18 Georgetown University Law Centers Advanced E-discovery
19 Institute, and a Member of the Board of Advisors for
20 Bloomberg BNAs Digital Discovery and the Evidence.

21 The point with all of this is that we were advised
22 to find someone who could help us do our due diligence as
23 the Lead Counsel Committee, to ensure that the process is
24 both as efficient and affordable as it possibly could be
25 here.

1 And we believe based on what we have done with
2 Conor's help over the last several months in interviewing
3 many of these different software vendors for this process,
4 that we could reduce the cost from a seven-figure number, to
5 a much more modest -- a fraction of that amount. And we can
6 expedite the process by doing it correctly.

7 Now, in terms of the math involved and all of the
8 statistical sampling that is required, the various
9 algorithms these companies use is frankly way over my head.
10 Someone like Conor and the other groups we interviewed can
11 do a much better job explaining why that is. But, I am sure
12 Your Honors are familiar with the studies that are out there
13 to show how this process can be expedited and made more
14 efficient.

15 THE HONORABLE JUDGE DONOVAN FRANK: And separate
16 from the MDL process, I suspect that most Federal Courts are
17 doing what we are doing. The expectation of when you meet
18 in the initial Rule 16 conference is to either have talked
19 to your tech expert, whatever, and be prepared to come in
20 and talk about cost, protocol, retrieval, and that type of
21 thing. Because as you said, apart from this case, the legal
22 profession and courts are criticized for not managing this
23 and doing it early and defining its scope.

24 And yes, the issue of proportionality comes in
25 almost in every case these days. I don't know if you have

1 anything further to say about that?

2 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL: No,
3 I don't.

4 MR. GORDON: Precisely, Your Honor, that is really
5 it. I mean, the only concern we have at this point about
6 what we know about the New Jersey production is that there
7 are a lot of questions raised in the Order that would lead
8 to multiple meet and confers that I don't know have been
9 resolved yet. So, to the extent there has been a company
10 retained there that has been doing the work, and some of
11 what Mr. Crowley has seen so far at least suggests to us or
12 gives us pause as to whether the quality of the production
13 is such that we can be confident in the process.

14 So, we want to be able to sit down -- we are
15 prepared today, frankly, but I understand that there are
16 other people that need to be here for Stryker. But,
17 certainly, we believe this process won't be done in one meet
18 and confer. It will take multiple meetings. So, we are
19 really ready to get to it as soon as possible.

20 THE HONORABLE JUDGE DONOVAN FRANK: Well, I think,
21 not to interrupt your comments or opposing counsel, but I
22 think our expectation is that through some of the
23 get-togethers, meet and confers on some of these other
24 issues, that this topic should be addressed by the parties
25 with the help of your respective experts. And then there

1 may or may not be an agreement on, well, the time has come
2 where we are going to ask the Court as soon as the next
3 January conference that is, I believe, the 23rd, to address
4 this issue. And then if you can't -- depending on the
5 aspects you can't agree on, if one of those is: Well, we
6 not only want this issue raised with time set aside in
7 January, but we want -- we think both our respective experts
8 should be here. In the patent context they call them
9 tutorials, rather than an adversarial process. But, whether
10 it is that context or a combination, then if you can't agree
11 on that, like we said in chambers, I assume we will get a
12 phone call saying we need an immediate telephone conference
13 just for the Judges to say yes or no to what is going to
14 happen in January, because we not only can't agree on how to
15 proceed, but one of us wants to have folks here in January
16 so we can get an order, and one group doesn't.

17 I assume that is kind of what we talked about, I
18 think, Judge Noel?

19 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL:

20 Yes.

21 THE HONORABLE JUDGE DONOVAN FRANK: That should
22 give you both input into both, how we do this and when we do
23 it.

24 MR. GORDON: I think that is a great idea, Your
25 Honor. We appreciate it. I think we have a tentative

1 meeting set, or we would like to be ordered to, if
2 necessary, to meet on January 10th to work through this that
3 day. And then if we can't work through some of these
4 issues, we would certainly appreciate the opportunity to
5 revisit it with the Court even before January 23rd. Thank
6 you.

7 MS. WOODWARD: Your Honor, I will be brief. We
8 believe we have been meeting and conferring with the
9 Plaintiffs over the past couple of months about ESI issues.
10 They have been very vocal in their desire about discussing
11 these issues.

12 We shared with them the New Jersey Order of
13 production, which is a key order, because our ESI process
14 has been based off that Order. And millions of dollars on
15 our end has already been spent on that process. Some of the
16 Plaintiffs' leadership were in attendance at a deposition
17 that was all about ESI back in August.

18 So, they have some ideas of what has been done.
19 The process, I think, got a little bit stalled when we asked
20 them to outline for us what they wanted to talk about. And
21 when we got that letter, it was more than just technical
22 issues. The issues that they outlined did cross over into
23 mental impressions. And that is a key red flag for us. So
24 we, I can confirm, will have a telephone conference with the
25 Plaintiffs with our ESI team on January 10th, and hopefully

1 we can work through some of these issues and that Mr.
2 Gordon's words here about the issues, he is concerned about
3 not crossing over into mental impressions, are true and
4 accurate.

5 MR. GORDON: I just want to -- thank you, Your
6 Honors. I just want to, if I may, briefly say I don't want
7 to be unnecessarily contentious, Your Honor. I am not sure
8 the chronology that Ms. Woodward spelled out is exactly
9 accurate. And certainly, this idea of us needing to answer
10 questions before they could meet and confer with us only
11 came up after Thanksgiving.

12 We had discussions before Thanksgiving, and I
13 brought this up briefly at the Thanksgiving hearing over the
14 phone, and it was only after that that we received a request
15 to have a list of questions which I don't know that that is
16 necessary. But, in order to try to foster the process, we
17 talked with Mr. Crowley, we came up with some topic areas on
18 the fly quickly to try to move the process forward.

19 And those were then, I guess, passed back. Maybe
20 there were some issues with him, I am not sure. But, that
21 was a recent development. We have been asking for the
22 meeting to figure out what the questions are, frankly,
23 before that request was ever made of us. And that was only,
24 you know, in the last couple of weeks.

25 MS. WOODWARD: It is fair when someone asks you

1 for a meeting, to ask them what topics they want to cover at
2 the meeting so you can be prepared to address those topics.
3 And that is what was asked for, and received, and on January
4 10th we will be prepared.

5 MR. GORDON: My point was only that it was
6 belatedly received. I have been asking you for it since the
7 last hearing. That is my only point.

8 THE HONORABLE JUDGE DONOVAN FRANK: I think where
9 we are at, in order to be fair to both of you, regardless of
10 what has happened up until today, we have kind of a timeline
11 and system in place, because I think the one thing is some
12 decisions should be made, whether it is by agreement or
13 court decision soon, so we have something in place, and a
14 way to get back to the Court. So, did you want to get in
15 here?

16 THE HONORABLE MAGISTRATE JUDGE FRANKLIN NOEL: My
17 understanding of what you have just told us is you are going
18 to meet on January 10th with your respective e-discovery
19 experts and what I hope the Court would get at some point
20 then is what decisions you need made by the Court. And if
21 we can do that before January 23rd, that would be fine. If
22 it is going to be on January 23rd, so be it.

23 MR. GORDON: Yes, sir, we will do that. We
24 appreciate that.

25 MS. WOODWARD: Thank you, Your Honor.

1 THE HONORABLE JUDGE DONOVAN FRANK: Where does
2 that leave us, counsel?

3 MR. FLOWERS: That leaves us done, I think, Your
4 Honor.

5 MS. WOODWARD: Happy holidays.

6 THE HONORABLE JUDGE DONOVAN FRANK: So, we will be
7 together on January 23rd. And is there any questions
8 Plaintiffs' counsel has in terms of whether it's something
9 we have said or not said, whether it was in chambers or
10 here, about what is going to be happening between now and
11 the January 23rd date?

12 MR. FLOWERS: No, Your Honor, thank you.

13 THE HONORABLE JUDGE DONOVAN FRANK: For defense?

14 MS. WOODWARD: No, Your Honor.

15 THE HONORABLE JUDGE DONOVAN FRANK: Well, thank
16 you, everybody, for their appearances. And I hope everybody
17 has safe travels, and happy holidays. And we will be in
18 touch with everyone.

19 And I think I have already said it, but I know I
20 said back in chamber -- well, I have said it here, too.
21 But, if I do have some contacts, and I will be in the next
22 few days with a couple of the State Judges, I will -- if
23 there is anything that I think seems like, well, I think the
24 lawyers should know this, at a minimum I will just send out
25 a -- have Brenda send out an e-mail just confirming that I

1 made the contacts. And if there is anything unusual,
2 hopefully, in a good way, not a negative way, either way I
3 will update you with an e-mail to your respective offices.

4 So, can I ask a question of Mr. Nemo that has
5 absolutely nothing to do with the MDL? Have I -- do I
6 understand that Ron Meshbeshier is formally retiring?

7 MR. NEMO: Yes, after decades of service he has
8 decided to wrap things up.

9 THE HONORABLE JUDGE DONOVAN FRANK: He is getting
10 an award on February 20th, it is?

11 MR. NEMO: Yes, he is. So, as of the end of the
12 year, he will be finished practicing law. Although, I
13 imagine he will be at the office until the day he dies.

14 THE HONORABLE JUDGE DONOVAN FRANK: I suspect that
15 is true. Well, if you would greet him for me -- unrelated
16 to the MDL, of course, really -- even though I have had a
17 couple of cases with him as a Federal Judge, one of the true
18 privileges -- and I frankly think that he sets an example
19 for -- he, of course, is one of the few lawyers, too, who
20 has done both this highly-specialized civil and criminal
21 work. But, he sets an example for all of us.

22 I had the privilege of getting on the Supreme
23 Court Criminal Rules Committee back in 1985 as a young
24 ignorant State Court Judge and got to know he and his wife
25 Kim and family very well. And then, of course, when I came

1 here in '98, I could no longer stay on the State Supreme
2 Court's Committee. So, and I have had little contact with
3 him. But, if you would -- but I did see that somewhere,
4 another lawyer -- not from your firm -- said he is retiring.
5 And I said, maybe in our definition, but I bet he will be
6 coming into work everyday.

7 MR. NEMO: Well, he speaks very highly of you,
8 too, Your Honor.

9 THE HONORABLE JUDGE DONOVAN FRANK: Well, thank
10 you all. And I assume we will keep everybody in the loop,
11 here, and we are adjourned. And Mr. Crowley, I hope -- at
12 least the weather wasn't 20 below zero.

13 MR. CROWLEY: No, Your Honor, it was quite
14 delightful.

15 THE HONORABLE JUDGE DONOVAN FRANK: We are
16 adjourned. Thank you.

17 (Adjournment.)

18 * * *

19 I, Jeanne M. Anderson, certify that the foregoing
20 is a correct transcript from the record of proceedings in
21 the above-entitled matter.

22
23
24 Certified by: s/ Jeanne M. Anderson
25 Jeanne M. Anderson, RMR-RPR
Official Court Reporter